

Tourism and Labour

Opening Vistas and Emerging Challenges

EQUATIONS
December 2008

According to the International Labour Organisation's (ILO) Global Report 2006, it affects the lives of 218 million children. India has the distinction of the largest number of working children in the world today. Indian official statistics speak about almost 13 million children, but unofficial estimates vary between 60 and 100 million children. In India, as in the world over, tourism is one more realm that pulls in a significant number of children as child labour. This paper links tourism to child labour, informs on the legislative and policy back-up to eliminate child labour and the illusive implementation of the ban on child labour in the hospitality sector.

Introduction

Child labour continues to be a worldwide problem. According to ILO's Global Report 2006, it affects the lives of 218 million children. This number is probably underreported because many children engaged in domestic work or agricultural or home based industries are many often not included in the official figure. India has the distinction of the largest number of working children in the world today. Indian official statistics speak about almost 13 million children, but unofficial estimates vary between 60 and 100 million children¹. This coincides with estimates of NGO's that around 40% of all 250 million children between 6 and 14 years are not in school on a given day.

Child labour hampers the normal physical, intellectual, emotional and moral development of a child. Children who are in the growing process can permanently distort or disable their bodies when they carry heavy loads or are forced to work near burners/ gas stoves adopt unnatural positions at work for long hours. Children are less resistant to diseases and are easily affected physically, cognitively, emotionally, socially and morally. Children do not work out of their own choice but in most cases are compelled to work because of situations which are beyond their control. One most serious causes of the prevalence of child labour in India is livelihood and poverty. Children are considered as economic assets of poor families. At very young age they are pushed to work for supplementing the family income. Poverty caused by natural disasters, droughts, forced migrations, the push to urban areas for survival, economic crises, displacement and armed conflict also lead to situations of increase in child labour. Labour economics also plays a role in increasing child labour. Child labour is cheap labour. Children are employed instead of adults to lower the costs of production. Further children are being engaged to work because they can be forced to work for long hours. It is a factor of cutting the costs for the employer.

Child Labour and its Links to Tourism

Tourism is one of the fastest growing sectors in India and has received much impetus from the government as it is seen as a major contributor to the economy. But close scrutiny reveals that tourism has various social, economic, cultural and environmental impacts. Tourism by nature is resource consumptive, both natural and human resource. The ban on employment of children in domestic and hospitality sector imposed by the Ministry of Labour and Employment, Government of India in 2006 is an acknowledgement of the fact that tourism as an industry has extensively exploited child labour. Tourism and hospitality sector has been recognised as one of the hazardous sectors where children should not be employed.

It is widespread to see children in the tourism sector working in abysmal conditions in small restaurants and shacks, selling curios and trinkets in tourism areas and beaches, rag pickers, tourist guides, or begging rich tourists for money. In hotels, children work as bellboys, waiters and waitresses, maids, housekeeping workers while in catering, many are kitchen helpers or dishwashers or servers. Children also work as masseurs and prostitutes. In the travel business, they work as porters and coolies, cleaners and assistants and for carrying loads on treks. Most of these children work in extremely difficult working conditions. These children do not have protection for their long strained working hours which is in most cases under unhealthy and dangerous conditions and also most often under intimidation. This results in poor physical and psychological health of the children.

Children involved in tourism related work run extra risk of being sexually exploited due to constant exposure and involvement with strangers, many of whom often frequent places with the intention of exploiting children. For instance, children employed in roadside eateries and highway dhabas come in contact with both locals and tourists. In

the process, they are exposed to sexual abuse and drug abuse and thereby highly vulnerable to sexually transmitted diseases like HIV/AIDS.

Tourism is also one of the factors responsible for increase in trafficking, sexual exploitation of children and child pornography. Unregulated and unaccountable tourism development with no protective measures has added to the exploitation of children in tourism. While the debate over the child sexual abuse and trafficking in the context of tourism has been ongoing, child labour which undoubtedly exploits a much larger number of children has not drawn serious condemnation or concerted action by this image conscious industry.

Legislative and policy back-up to eliminate child labour

The Constitution of India enshrines in the Fundamental Rights and the Directive Principles of State Policy that:

- No child below the age of 14 years shall be employed to work in any factory or mine or engaged in any other hazardous employment²;
- The State shall direct its policy towards securing that the health and strength of workers, men and women and the tender age of children are not abused and that they are not forced by economic necessity to enter vocations unsuited to their age and strength³;
- Children shall be given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth shall be protected against moral and material abandonment⁴
- The State shall endeavour to provide within a period of 10 years from the commencement of the Constitution for free and compulsory education for all children until they complete the age of 14 years⁵

Child labour is a matter on which both the Union Government and state governments can legislate. Legislations that primarily address the concerned issue are the Child Labour (Prohibition and Regulation) Act, 1986 (herein after referred as Child Labour Act) and Factories Act, 1948, The Apprentices Act 1951, The Plantation Labour Act, 1951, The Mines (Amendment) Act 1983, The Juvenile Justice Act 1986. Interestingly, most of the existing laws speak about prohibiting child labour and not eliminating it.

With respect to tourism, apart from the legal ban that was brought in 2006 by the union government and specific legal initiative stated in the Goa Children's Act 2003, few initiatives are seen in the horizon. Some states like Karnataka, Andhra Pradesh, Kerala, Maharashtra, Gujarat and Madhya Pradesh have come out with State Action Plans to eliminate child Labour. The question arises – have these plans been implemented or they are just paper tigers? To take the example of Karnataka, the Action Plan to Eliminate Child Labour in Karnataka 2002-2007 was brought in 2002. In 2008, the government of Karnataka expressed their inability to implement the plan of action due to resource crunch and have just extended the implementation period of the same plan to 2008-12. Therefore the question arises is the government truly committed on this issue. When questioned the authorities both at the centre and the state level showcases that the commitment of the government is shown from the fact that India is a signatory to three International Conventions related to child labour, namely, ILO Forced Labour Convention (No. 29); ILO Abolition of Forced Labour Convention (No. 105); UN Convention on the Rights of the Child (CRC). Just ratification is meaningless unless government comes out with proper policies to eradicate child labour and also implements it effectively.

With respect to ratification of international conventions it is important to mention that Government has also not ratified two important international conventions on child labour of the International Labour Organisation (ILO). These conventions clearly specifies what combating child labour should amount to in practice. These are the "Minimum Age Convention" (No.138)⁶ and the Convention on the "Worst Forms of Child Labour" (No. 182)⁷. These Conventions have been jointly drafted in the ILO by national governments, employer's associations and trade unions. The government and industry are both therefore politically and morally obliged to implement them. The Minimum Age Convention specifies that working is banned for children under the age of 15. The Worst Forms of Child Labour Convention includes a ban on hazardous work for children under the age of 18. This Convention also bans employment of children as child soldier, in drugs trafficking, pornography and prostitution, and forced labour.

Research across the country has shown that keeping the age for child labour as 14 years should be changed as India is a signatory to the UNCRC where we have agreed the age of child to be upto 18 years. In India, a child is defined differently in various legislations which create hindrance for the implementation of the protection of children and for the convergence between the various Ministries and Departments who are responsible to tackle the issue of child labour in the country.

Campaign that led to the ban

Since employment in tourism and hospitality industry was not within the category of “hazardous occupation”, the employment of children in tourism and hospitality industry continued inspite of the Child Labour Act being passed in 1986. Activists have been campaigning for years to include children working as child labours in homes and tourism and hospitality sector to be under the “hazardous” category to protect children who are subjected to physical violence, psychological trauma and even sexual abuse. There is acute need to acknowledge abuse of children in these occupations which, most often go unnoticed and un-reported as they take place within the confines of homes and tourism service outlets like hotels, resorts, restaurants etc. In February 2006, responding to a petition filed by Shantha Sinha of M.V. Foundation in connection to an already pending Public Interest Litigation (PIL) by environmentalist and lawyer M.C. Mehta, the Supreme Court issued notice to the Centre, the states and the Union Territories, seeking a complete ban on child labour. In the Petition, the petitioners had contended that the existing legislations were not completely prohibiting child labour in all occupations and processes. The Child Labour (Protection and Regulation) Act, 1986 only prohibited employment of children in certain specified hazardous occupations and processes and regulated the working condition in others. This led to the amendment of the Child Labour Act in 2006 and the bans were imposed.

The Government of India banned employment of children as workers in roadside eateries, teashops, restaurants, hotels etc along with other sectors, to be effective from October 2006. The context for this ban Notification according to the Ministry of Labour and Employment, Government of India, is that in these spaces children are subjected to physical violence, psychological trauma and even sexual abuse. With the ban coming into force, child labour in the tourism and hospitality sector is now categorised as hazardous work under the Child Labour Act. The Notification is recognition by the Government that child labour exists in these sectors and these children are exploited, both physically and mentally. While there has been no official survey on child labour in India, child rights groups like the Bachpan Bachao Andolan (BBA), Save Childhood Movement and HAQ-Centre for Child Rights estimate the figure to be as high as 10 million children employed as domestic help, and an equal number in restaurants and dhabas. According to these organisations "Though the government's official figure for child labour employed in hazardous occupations is just 110,000, our estimate is between 60-100 million,"⁸

The illusive implementation of the ban

Any move by the Government particularly in the context of the need for stern and defined measures to stop exploitation of children has always been supported by the Civil Society Organizations in the country. With respect to the implementation of this ban once again the government has failed to demonstrate serious intent. In the name of effective implementation of the ban, children are picked up from the streets, from small hotels, roadside eateries and put in rehabilitation and juvenile homes. Given the way these homes are run, they are not protected from abuse and exploitation. This does nothing but the actual problem is pushed underground. It is important that the government has implementable mechanisms where the children can be reunited with communities and families rather than institutionalised mechanisms. Ironically, local authorities in most states have been asked to prepare to accommodate thousands of children expected to be freed from their jobs by raids conducted by the labour officers on homes and restaurants. Scant attention has been paid to how they will be rehabilitating these children. For example in Kerala, EQUATIONS research has shown that in order to be seen implementing the ban, children are picked up from the streets, from small hotels, road side eateries and put them into rehabilitation and juvenile homes. As a result, child abuse cases have become even more hidden and covert.

The approach has also failed to be holistic. This ban is being seen as a tool by the government to curb the menace of child labour but does not address the issues behind the problem. In spite of recognizing the factor that poverty in the family in most cases pushes the children to work, no measures have been taken to address this larger issue. Even if a child is rescued and sent back to the family, actual rehabilitation can never take place unless and until the poverty and thereby the means of livelihood for the family are not thought about and taken care. The child is surely to be pushed back into work, in some other location and sector.

Thus, two years down the line, post the ban, enormous challenges remain in translating the law into practice. The concerns expressed by many child rights activists that the blanket ban without understanding the root causes of child labour would only push the problems into more dangerous ways underground have unfortunately proved true. Available data and estimates indicate that very few cases have been registered in the past year on account of this ban. Many children are still being seen at work in restaurants, hotels, tea stalls, etc. all over the country. While the

ban evoked responses from a wide range of actors particularly NGO's and civil society organisations working on child rights, the tourism industry was conspicuously silent.

Recent Policy Endeavour:

Guidelines Issued By National Commission For Protection Of Child Rights On Abolition Of Child Labour in 2008

National Commission for Protection of Child Rights (NCPCR) has asked the State Governments to take immediate steps to check child labour and rehabilitation of rescued children. The Commission has also asked to evolve a Code of Conduct for the employees of all public sector institutions, government undertakings, government funded institutions and government offices for not engaging children as domestic workers or encourage child labour in any form at their work places.

In a communication sent to the Chief Secretaries of the States and copies to the District Collectors, the Chairman of NCPCR, Smt. Shanta Sinha has urged the States to take strict action against the employers of children and issue strict warning to all the potential employers. This must be taken up as a drive; area- wise through mobile labour courts.

The issue of existence of child labour even after sixty years of independence is unacceptable and must be a matter of concern for all citizens in the country. Often child labour is justified by arguing that children's parents need their income or that it is impractical to remove child labour at one go. This has resulted in perpetuation of child labour and compromising on children's rights.

The perspective of the National Commission for Protection of Child Rights is that it is possible to abolish child labour if a wholehearted effort is made in this direction, both by the government and also the citizens in our country. This understanding is based on the innumerable efforts and success stories of the initiatives of the government as well as the NGOs in various states and regions in India. It is also based on the experiences of parents of erstwhile child labour who are making enormous sacrifices to see that the education of their children is not disrupted until they finished at least class ten. It has been recorded that there has been a profound change in even those parents who initially resisted the idea of their children being withdrawn from work. They owned up with pride the transformation of their child from a child labour to a student. In this sense, it was just a matter of time before they gained confidence to support their child's education and yearn for it. This is to say that if we repose faith in the poor, they are capable of partnering in the endeavour to abolish child labour.

Further, in NCPCR's perspective it is impractical for children to be suffering lack of childhood as child labourers and denied their right to education. There is a need to protect them from exploitation and give them all their entitlements as a matter of right. This must be done with a sense of urgency.

The following guidelines are issued to all the States to make sure that there is a total abolition of child labour and every child attends full time formal school. The strategies specified are Enforcement of law, Provision of Education and Rehabilitation, Campaign and Public Awareness and Coordinated Action at all Levels

Enforcement of law- The labour department must book cases against the employers and issue strict warning to all the potential employers. This must be taken up as a drive; area- wise through mobile labour courts and a plan of action for pursuing the cases that have been booked must be in place. It urges implementation of the Juvenile Justice Act 2006 (JJ Act), which includes within its purview, child labourers. Section 2 (d) (ia) includes 'working children' within the definition of a 'child in need of care and protection'. The JJ Act, under section 2 (k) defines a 'Child' as "a person who has not completed eighteenth years of age." Consequently this Act is much wider than the Child Labour Act, as it affords protection, care and cover to all children upto the age of 18 years as against the Child Labour Act which prohibits employment of children only upto 14 years of age. In other words, the JJ Act covers child labour which is not prohibited under the Child Labour Act. It also urges implementation of the Bonded Labour System Abolition Act, 1976 to book cases against employers of children. It is noted that most children work against advances taken by their families. Such children are also working mostly as migrant labour. The vigilance committees under the Act have to be activated and the revenue and labour department must enforce the law strictly. It must be recognized that there is no age restriction to book cases under the Act and the burden of proof that there is no advance involved is that of the concerned employer. In addition, the Contract Labour (Regulation and Abolition) Act, 1970 can be used to prosecute the principal employer in cases where the engagement of child labour has been done through a contractor. This practice is common and used by many companies to absolve themselves of any liability. This Act draws on the

principle of 'vicarious liability' and can be used effectively to prevent companies and contractors from engaging child labour.

According to NCPCR, the above Acts together would cover most children who are in the labour force including agriculture and allied activities and must be used individually and / or collectively, by the government and other stakeholders to take firm action against the employers concerned⁹.

Provision of Education and Rehabilitation: The Sarva Siksha Abhiyan (SSA) and the education department must take up the responsibility for rehabilitating children through its residential bridge courses (RBC) and mainstream them into formal schools. In fact, they have to be assigned to the schools even as students in the RBC¹⁰.

National Child Labour Project (NCLP) must be utilized for the initial transitional support, for counselling and giving comfort to the child rescued from labour force, especially in the case of those children under trauma or children working as migrant labour. The Child Welfare Committee must be involved in ensuring that the rescue and rehabilitation operations are child friendly and track every child till they are rehabilitated. They should also ensure that the health and other care are properly delivered to the child. The program for rehabilitation of children must be by providing all facilities for the child to be integrated into the school system.

Campaign and Public Awareness- There is also a need to galvanize the energy of one and all in creating a mass movement against child labour and for children's rights to education. Action plans to conduct publicity drives, enlisting support of all government officials, NGOs, teachers and trade unions, political parties, corporate sector , college students and all others in systematic fashion is necessary. NCPCR reiterated that media involvement is a must!

Coordinated Action at all Levels- The successful attainment of a child labour free society would largely depend on the coordinated action between all the departments concerned. It is absolutely essential that the relevant Government departments (i.e. Labour, Education, Women and Child, Revenue, Health, Police, etc) work together to implement the existing legislation(s) and policy towards eradicating child labour, promoting rescue and rehabilitation of such children, and facilitating formal education which is a fundamental right guaranteed to all under the Constitution of India. It is cannot be emphasized enough that unless there is a coordinated and sincere effort by and between all the stakeholders, child labour will continue to persist and aggravate.

The District Collectors are directed to draw up specific action plans to take up all the above tasks. As a preparation, it would be appropriate to take all actions to culminate in celebrations at the gram panchayats the successes of the initiatives on abolition of child labour and provision of education for released child labourers.

Way ahead

The above guideline has been a welcome policy endeavour with respect to eradication of child labour in the country. The time has come that the policies and legislations are not only formulated but implemented in right spirit and effectively. There is a need for all, government, Civil Society actors and the industry to join hands to stop all forms of exploitation of children, including child labour. Unless the process is initiated immediately, the deprivation and exploitation of the children will continue, resulting in lost of our tomorrow and their today.

You may reproduce this paper/publication in whole or in part for educational, advocacy or not-for-profit purposes. We would appreciate acknowledging EQUATIONS as the source and letting us know of the use.

Contact us

info@equitabletourism.org

+91-80-2545-7607 / 2545-7659

EQUATIONS, # 415, 2C-Cross, 4th Main, OMBR Layout, Banaswadi, Bangalore 560043, India

www.equitabletourism.org

End Notes

1 According to ILO's Global Report released on 4 May 2006 "An end to Child Labour – Within Reach"

2 Article 24 of the Constitution of India

3 Article 39 (e) of the Constitution of India

4 Article 39(f) of the Constitution of India

5 Article 45 of the Constitution of India

6 Convention No. 138 has been ratified by over 143 countries

7 Convention No, 182 has been ratified by over 158 countries

8 The Indian Express, Delhi edition dated August 2, 2006

9 At the same time all public sector institutions, government undertakings, government funded institutions and government offices must declare a code of conduct for all its employees not to engage children as domestic workers or encourage child labour in any form in their work places.

10 The Kasturba Gandhi Balika Vidyalaya (KGBV), social welfare hostels, ashram schools are also to be utilized to the fullest extent possible. All mainstream education systems and supportive structures hostels should be accessed to mainstream child labour into education system.